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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,185	01/25/2002	Eric Adler	BUR919990222US2	8374

28722 7590 09/30/2003

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EXAMINER

TUGBANG, ANTHONY D

ART UNIT	PAPER NUMBER
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3729

DATE MAILED: 09/30/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/057,185

Applicant(s)

ADLER, ERIC

Examiner

A. Dexter Tugbang

Art Unit

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

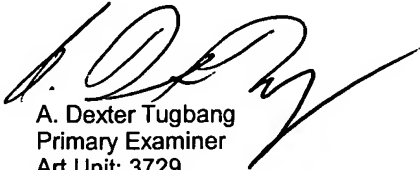
NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: None.Claim(s) rejected: 9-20.Claim(s) withdrawn from consideration: 21 and 22.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: Note the Attached Interview Summary (PTOL-413)

  
A. Dexter Tugbang  
Primary Examiner  
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Attachment to Advisory Action

I. Restriction Requirement

The applicant urges that the restriction requirement in the last Office Action (Paper No. 7) is erroneous because there is no basis for the requirement and that the limitations in each of Claims 21 and 22 are not distinct from the invention originally claimed.

The examiner traverses. For further clarification, Claims 21 and 22 belong to an invention of one group that is independent and distinct from another group defined as Claims 10-20. These two groups are of different subcombinations being disclosed as usable together and the basis for the restriction requirement falls under MPEP § 806.05(d). Nowhere in the group of Claims 10-20 are there any recitation of the specific features of an etch stop layer and conductive via. Thus, the group of Claims 21 and 22 were not originally presented and are distinct from the group of Claims 10-20. It is noted that Claim 9 is considered to be a linking claim (See MPEP § 809) and the examiner would consider rejoining Claims 21 and 22 if at some point during prosecution, linking claim 9 were to be found as being allowable.

II. Prior Art

In regards to the merits of Lee et al, the applicant believe that Lee does not teach forming at least one insulating sidewall spacer placed against the perimeter of the top plate and overlaying a portion of the dielectric layer. Applicant places a great deal of emphasis on the term “overlaying”.

The examiner most respectfully disagrees. The term of “overlaying” can be defined as, *to lay or spread over or on*<sup>1</sup>. The insulating sidewall spacers 70 of Lee lays over a portion of the

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<sup>1</sup> As defined by the American Heritage Dictionary

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outer perimeter of the dielectric layer 30 as shown in Figure 4. Therefore, the examiner maintains that Lee et al satisfies all of the limitations of the claimed invention.

It is further noted that the references that the applicant have enclosed with the After Final amendment were carefully considered by the examiner. The applicant attempts to define the term of “overlying” in these references. However, the definitions in the references define the term of “overlying” more specifically than that which is claimed. Limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).